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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

SUSAN RUSH, an individual,
 Plaintiff,
 vs.

SANTA MONICA POLICE OFFICER
 ROBERT FUJITA #3338; SANTA
 MONICA POLICE OFFICER L.
 LOPEZ #3805; CITY OF SANTA
 MONICA; AND DOES 1 THROUGH
 50, INCLUSIVE,

Defendants.

Case No.: 2:15-CV-01304-DSF-MAN

PLAINTIFF'S STATEMENT OF
 GENUINE DISPUTES OF
 MATERIAL FACT AND FACTS
 CONTROVERTING STATEMENT
 OF UNCONTROVERTED FACTS IN
 SUPPORT OF OPPOSITION TO
 MOTION FOR SUMMARY
 JUDGMENT OR ALTERNATIVELY
 SUMMARY ADJUDICATION FILED
 BY DEFENDANTS

DATE: November 16, 2015
 TIME: 1:30 p.m.
 PLACE: Courtroom 840

[Filed concurrently with Plaintiff's
 Opposition to Motion for Summary
 Judgment or Alternatively Summary
 Adjudication, Plaintiff's Statement of
 Genuine Disputes of Material Fact,
 Declaration of Gabriel H. Avina in
 Support of Opposition and Exhibits,
 Index to Exhibits]

PTC: January 25, 2016
 Trial Date: February 23, 2016

Plaintiff's Statement of Genuine Disputes of Material Fact and Facts
Controverting Statement of Undisputed Facts

Controverted Facts	Statement of Controverted Facts and Genuine Issues of Material Fact
<p>1. On March 29, 2014, at approximately 6:00 p.m. Officer Lizette Lopez of the Santa Monica Police Department was conducting a vandalism investigation regarding four juveniles.</p>	<p>1A. Ex. C, Depo. Lopez 14:4-15:7.</p> <p>Undisputed.</p>
<p>2. Officer Lopez detained the juveniles because she had reasonable suspicion that a crime may have occurred; although, she did not see it, she saw broken windows, broken glass on the floor and one of the juveniles peering through the broken glass and he reached in and placed his hand through the glass.</p>	<p>2A. Ex. C, Depo. Lopez 18:25 – 19:17.</p> <p>Undisputed.</p>
<p>3. Officer Lopez was filling out Field Interview (FI) cards to document their presence in the area.</p>	<p>3A. Ex. C, Depo. Lopez 20:23 – 21: 19.</p> <p>Undisputed.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13	4. While Officer Lopez was bent down towards the juveniles completing the FI cards, an individual, later identified as Susan Rush, came within 2 inches of her, startling her.	4A. Ex. C, Depo. Lopez 31:18 – 24. Disputed. When Ms. Rush arrived to the location, Officer Lopez was located on the other side of the four minors, which is not within 2 inches of Officer Lopez. Deposition of Susan Rush, (“ <i>Exhibit G</i> ”), exhibit 3. Deposition of Susan Rush, (“ <i>Exhibit G</i> ”), 44: 2 - 45:1, notes that Ms. Rush wrote an “S” for the location of Susan, “F” for Officer Fujita and “L” for Officer Lopez.
14 15 16 17 18 19	5. Ms. Rush immediately sat down next to a juvenile.	5A. Ex. C, Depo. Lopez 34:18 – 20. Disputed. Plaintiff crouched down next to one of the boys and asked him if he had been able to call his mother. Declaration of Susan Rush, ¶ 3.
20 21 22 23 24 25 26 27	6. When Ms. Rush first appeared Officer Fujita had already responded to the location to assist with the vandalism investigation.	6A. Ex. C, Depo. Lopez 18:3-5. Disputed in part. It is not disputed that when Ms. Rush appeared Officer Fujita was already at the location. It is disputed, however, as to whether or not Officer Fujita was assisting in an “investigation.” Officer Lopez was completing Field Interview (FI) cards

1		on the juveniles when Officer Fujita arrived.
2		Upon his arrival to the location, Officer Lopez
3		told Officer Fujita that she did not believe the
4		juveniles either vandalized or burglarized the
5		property, but she wanted to complete FI cards to
6		note their presence. Thus, Officer Lopez' legal
7		basis for an investigation was already over by the
8		time Officer Fujita arrived.
9		Supplemental Incident Report by Lizette Lopez,
10		(<i>"Exhibit I"</i>).
11		
12		
13	7. When Officer Fujita arrived,	7A. Ex. C, Depo. Lopez 27:14-20.
14	Officer Lopez told him she was	
15	going to fill out the field	Undisputed.
16	interview cards and let the	
17	juveniles go.	
18		
19	8. On March 29, 2015, at	8A. Ex. D, Depo. Rush 32:13-22, 33:8 – 18.
20	approximately 5:30, Ms. Rush	
21	picked up her son and his	Undisputed.
22	friend to go get pizza.	
23		
24	9. However, Ms. Rush did not	9A. Ex. D, Depo. Rush 34:12-13, 35:5-22.
25	go get pizza because when she	
26	was driving on 11th Street she	Disputed, in part.
27	saw some kids sitting on the	While driving to get pizza, Ms. Rush saw the kids
28		

1	curb with police around them	and at least one of the police cars. She did not
2	and she thought she knew	see the police officers while she was driving.
3	them. The kids were male.	Deposition of Susan Rush, (<i>“Exhibit G”</i>), 38:12-
4		17.
5		
6	10. The police officers were in	10A. Ex. D, Depo. Rush 36:4-15.
7	uniform and she saw at least 2	Disputed in part.
8	police cars.	Ms. Rush did not see the police officers while she
9		was in her car.
10		She did not see the police officers while she was
11		driving. Deposition of Susan Rush, (<i>“Exhibit</i>
12		<i>G”</i>), 38:12-17.
13		
14		
15	11. She parked the car and told	11A. Ex. D, Depo. Rush 40:12 – 24.
16	her son and his friend, she was	
17	going to go check on the kids	Undisputed.
18	and would be right back.	
19		
20	12. When Ms. Rush reached	12A. Ex. D, Depo. Rush 44:16-22.
21	the corner of 11th and	
22	Broadway, the corner where	Undisputed.
23	the kids were sitting on the	
24	curb on Broadway, she noticed	
25	police officers in proximity to	
26	the four kids.	
27		

1	13. When Ms. Rush first	13A. Ex. D, Depo. Rush 44:21-45:1.
2	noticed the police officers, she	
3	noticed that the police officer at	Undisputed.
4	the far end of where the kids	
5	were sitting was a female.	
6		
7	14. When Ms. Rush stepped up	14A. Ex. D, Depo. Rush 46:4-7.
8	on the curb she did not hear	
9	either of the police officers	Undisputed.
10	speaking to anyone.	
11		
12	15. When Ms. Rush stepped up	15A. Ex. D, Depo. Rush 46:8-13.
13	on the curb she asked the kid	
14	closest to her if he was able to	Undisputed.
15	call his mom.	
16		
17	16. Ms. Rush did not ask the	16A. Ex. D, Depo. Rush 46:14-16.
18	police officer if she could	
19	speak to the children sitting on	Undisputed.
20	the curb.	
21		
22	17. Ms. Rush doesn't recall if	17A. Ex. D, Depo. Rush 46:25-47:1
23	she sat down next to the kid	
24	that she asked if he could call	Undisputed.
25	his mom.	
26		

27

28 7

1	18. Ms. Rush doesn't recall if at	18A. Ex. D, Depo. Rush 47:4-7.
2	the point that she asked the first	
3	kid closest to her if he could	Undisputed.
4	call his mom, if either of the	
5	police officers said anything to	
6	her.	
7		
8	19. When Ms. Rush made the	19A. Ex. D, Depo. Rush 47:8-48:11.
9	statement – asked the one kid if	
10	he could call his mom - she	Undisputed.
11	was the only one that spoke,	
12	and none of the four kids were	
13	speaking and neither of the	
14	police officers said anything.	
15		
16	20. The next thing that took	20A. Ex. D, Depo. Rush 48:12-49:9.
17	place after Ms. Rush asked the	
18	kid if he could call his mom	Undisputed.
19	was she walked over to where	
20	the male police officer was	
21	standing very close to the	
22	building and asked him "What's	
23	happening".	
24	21. When Ms. Rush asked the	21A. Ex. D, Depo. Rush 50: 8 -16.
25	male officer "What's	
26	happening", the male officer	Undisputed.
27	said something which she	
28	8	

1	doesn't recall.	
2		
3		
4	22. Between the point that Ms.	22A. Ex. D, Depo. Rush 49:10-15.
5	Rush had asked the first kid on	
6	the curb if he could call his	Undisputed.
7	mom and the point that she	
8	asked the male police officer	
9	that was next to the building	
10	"What's happening", no one	
11	had said anything.	
12		
13	23. She next asked the male	23A. Ex. D, Depo. Rush 50:22-15.
14	officer him for his "name".	Undisputed.
15		
16	24. At the point Ms. Rush	24A. Ex. D, Depo. Rush 51: 1-5.
17	asked the male officer for his	Undisputed.
18	name the female was at the far	
19	end where the kids were sitting.	
20		
21	25. The male officer then asked	25A. Ex. D, Depo. Rush 51:24-52:2.
22	her if her "iPhone was a	Disputed in part. Defendant Fujita responded to
23	weapon and if she was filming	Ms. Rush in a rude and angry voice, stating "Are
24	him?"	you filming me, is that a weapon," and then
25		suddenly snatched her phone out of her hand and
26		quickly walked away. See GMF 104, below. [Dec
27		¶ 4, 5]
28	9	

1 2 3 4 5 6 7	26. He then took her iPhone and walked away towards the corner.	26A. Ex. D, Depo. Rush 58:17-22. Disputed in part. <i>See</i> 25A. Defendant Fujita seized Plaintiff's phone from her hand. Deposition of Susan Rush, (<i>"Exhibit G"</i>), 53:12-13. Declaration of Susan Rush, (<i>"Exhibit F"</i>), ¶¶ 4-7.
8 9 10 11 12 13 14	27. When the male officer took Ms. Rush's phone she doesn't recall what she did.	27A. Ex. D, Depo. Rush 56:6-11. Disputed. When Defendant Fujita seized Plaintiff's phone she was trying to record his name. Deposition of Susan Rush, (<i>"Exhibit G"</i>) 53:14-54:2. Declaration of Susan Rush, (<i>"Exhibit F"</i>), ¶¶ 4-7.
15 16 17 18 19 20 21	28. Ms. Rush believes that after he walked away she looked at the female officer and said "He took my phone" the female officer said "He took your phone", like a question.	28A. Ex. D, Depo. Rush 59:3-15. Undisputed.
22 23 24 25 26 27	29. After the female officer said "He took your phone", the next thing that took place was Ms. Rush observed the female officer to receive a call and heard her say in response "Oh,	29A. Ex. D, Depo. Rush 59:16 – 60:9. Undisputed.

1	they're free to go."	
2		
3		
4	30. At this point the female	30A. Ex. D, Depo. Rush 60: 10 -14.
5	officer was still standing at the	Undisputed.
6	end of the four kids, when she	
7	said they are free to go.	
8		
9	31. After Ms. Rush observed	31A. Ex. D, Depo. Rush 60: 15 – 17.
10	the female officer receive the	Undisputed.
11	call the female officer told	
12	them they could go.	
13		
14	32. When the female officer	32A. Ex. D, Depo. Rush 60:18 – 22.
15	told the four kids they were	
16	free to go she was still standing	Undisputed.
17	on the sidewalk at the far end	
18	of the four boys that were	
19	sitting on the curb.	
20		
21	33. Ms. Rush thought the age	33A. Ex. D, Depo. Rush 61:4-7.
22	of the boys was about fifteen.	
23		Undisputed.
24		
25	34. At the point that the female	34A. Ex. D, Depo. Rush 62:3 - 6.
26	officer said to the boys that	
27	they were free to go, Ms. Rush	Undisputed.

28 11

1	did not know where the male	
2	officer was.	
3		
4	35. Ms. Rush did not observe	35A.
5	the four boys stand up and	Ex. D, Depo. 62:7-9.
6	leave.	
7		Undisputed.
8		
9	36. At the point that Ms. Rush	36A. Ex. D, Depo. 62:24-63:4.
10	heard the female officer tell the	
11	four boys they were free to go,	Undisputed.
12	Ms. Rush was still standing in	
13	the same location that she was	
14	in when the male officer took	
15	her cell phone.	
16		
17	37. After the female officer told	37A. Ex. D, Depo. 62:10-23.
18	the four boys they were free to	
19	go, Ms. Rush observed the	Undisputed.
20	male officer come back from	
21	around the corner, that would	
22	have been the corner where you	
23	would walk around, turn right,	
24	onto 11 th Street.	
25		
26	38. Ms. Rush claims that when	38A. Ex. D, Depo. 64:2-4.
27	the male officer returned from	
28	around the corner he attacked	Undisputed.

12

**PLAINTIFF'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT AND FACTS
 CONTROVERTING STATEMENT OF UNDISPUTED FACTS**

her.

39. When the male officer came back around the corner and attacked Ms. Rush the female officer was still at the far end of the kids on the sidewalk.

39A. Ex. D, Depo. 64:5-15.

Disputed.

When Officer Fujita attacked Ms. Rush, Officer Lopez walked *over a couple of feet* and grabbed Ms. Rush's arm to assist Officer Fujita in handcuffing Ms. Rush. Deposition of Lizette Lopez, (*"Exhibit H"*), 46:1-11

Additionally, Officer Fujita testified in his deposition that he seized Ms. Rush's mobile phone when he was handcuffing her; this is untrue. According to the Video recording of Officer Fujita handcuffing Ms. Rush, recorded from Ms. Rush's iphone, (*"Exhibit J"*), someone was recording Officer Fujita handcuffing Ms. Rush from Ms. Rush iphone. Clearly, the person who is recording is not Ms. Rush or Officer Fujita, since they are both captured in the video recording. At this point of the incident, no other officers were present at the scene except Officer Lopez and Officer Fujita. Deposition of Lizette Lopez, (*"Exhibit H"*), 49:18 – 50:2. Since Officer Lopez is the only person not captured in

1		the video recording, one can deduce that Officer
2		Lopez is the person behind the iphone recording
3		the incident. Based on the video recording the
4		distance between the person recording (Officer
5		Lopez) and the incident of Ms. Rush being
6		handcuffed is not as far as eight feet, but more
7		like a few feet.
8		
9		
10	40. Ms. Rush described the	40A. Ex. D, Depo. 69:12-16.
11	attack as the male officer	
12	pulled her arm behind her back	Undisputed.
13	and threw her to the ground.	
14		
15		
16	41. The first time the male	41A. Ex. D, Depo. 72:3-12.
17	officer touched Ms. Rush she	
18	believes it was her left arm.	Undisputed.
19		
20	42. Ms. Rush recalls the officer	42A. Ex. D, Depo. 72: 10-12.
21	may have been standing behind	
22	her when he first touched her	Undisputed.
23	left arm – it was very quick.	
24		
25	43. At the point the male	43A. Ex. D, Depo. 74:15-23.
26	officer took a hold of Ms.	
27	Rush's left wrist, the female	Disputed.
28	officer was where she had been	Defendant Lopez assisted Officer Fujita in

1 on the sidewalk the whole time	handcuffing Ms. Rush by <i>walking over a couple</i>
2 at least eight feet or so away.	<i>feet</i> and grabbing her arm. Deposition of Lizette
3	Lopez, (“ <i>Exhibit H</i> ”), 46:1-11.
4	
5	
6	
7	
8 44. When the male officer put	44A. Ex. D, Depo. 74:24- 75:13.
9 Ms. Rush’s arm behind her	
10 back and then she went forward	Undisputed.
11 to the ground Ms. Rush did not	
12 see the female officer approach	
13 or leave the location where she	
14 had previously seen her.	
15 45. When the male officer took	45A. Ex. D, Depo. 54:14-18, 53:14-55:25.
16 the phone from her hand Ms.	
17 Rush was approximately 2 to 3	Undisputed.
18 feet from him at the far end of	
19 where the one kid she spoke to	
20 was sitting, more towards the	
21 cross walk.	
22	
23 Plaintiff’s Facts	Supporting Evidence
24 Controverting Statement of	
25 Undisputed Facts	
26	
27	
28	

1	101. Ms. Rush thought she	101A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
2	recognized the boys from her	¶2.
3	son’s school.	
4	102. Ms. Rush felt that she	102A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
5	should help them because they	¶2.
6	appeared to be in trouble.	
7	103. When Ms. Rush	103A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
8	approached Officer Fujita she	¶ 4.
9	had her iphone in her hand and	
10	asked for his name.	
11	104. Almost immediately after	104A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
12	she asked for his name, Officer	¶5.
13	Fujita rudely and angrily said,	
14	“Are you filming me, is that a	
15	weapon,” and then suddenly	
16	snatched Ms. Rush phone out	
17	of her hand and then he quickly	
18	walked away towards the	
19	corner.	
20	105. Almost immediately after	105A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
21	he left, Officer Fujita cam back	¶6.
22	towards Ms. Rush and grabbed	
23	her left arm and threw her face	
24	first onto the sidewalk, and	
25	applied force with his body	
26	against her back and arms for	
27	what felt like a long time.	

1	106. While being forcibly held	106A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
2	on the ground, Ms. Rush could	¶¶ 6-7. In-car video and audio recording of
3	not breathe, so she yelled, “I	Defendant Fujita, (“ <i>Exhibit K</i> ”).
4	can’t breathe,” “you’re	
5	breaking my arm,” “he’s killing	
6	me,” and “someone please help	
7	me.”	
8	107. Officer Fujita handcuffed	107A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
9	Ms. Rush while he was on top	¶8.
10	of her, as she lay on the	
11	ground.	
12	108. Officer Lopez was present	108A. Declaration of Susan Rush, (“ <i>Exhibit F</i> ”),
13	during the entire incident.	¶9.
14		
15	109. According to Officer	109A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
16	Lopez’ deposition testimony,	<i>H</i> ”), 46:5-22.
17	Officer Lopez assisted Officer	
18	Fujita by grabbing a hold of	
19	Ms. Rush’s arm and then	
20	placing her left knee of top of	
21	Ms. Rush’s thigh.	
22	110. According to Officer	110A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
23	Lopez’s deposition testimony,	<i>H</i> ”), 46:5-22.
24	she placed her knee on Ms.	
25	Rush’s thigh and attempted to	
26	gain control of Ms. Rush’s	
27	hand and wrist so she could	
28	place handcuffs on Ms. Rush.	

1	111. Officer Lopez had her	111A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
2	knee on Ms. Rush’s thigh for	<i>H</i> ”), 47:14-16.
3	approximately 1 minute.	
4	112. According to Officer	112A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
5	Lopez’ deposition testimony	<i>H</i> ”), 46:23 – 47:1. Supplemental Incident Report
6	and her supplemental incident	by Lizette Lopez, (“ <i>Exhibit I</i> ”).
7	report, Officer Lopez placed	
8	the handcuffs on Ms. Rush’s	
9	wrist.	
10	113. According to Officer	113A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
11	Lopez’ deposition testimony	<i>H</i> ”), 46:23 – 47:1. Supplemental Incident Report
12	and her supplemental incident	by Lizette Lopez, (“ <i>Exhibit I</i> ”).
13	report, Officer Lopez clicked	
14	the handcuffs on Ms. Rush’s	
15	right wrist.	
16	114. At the time of the incident,	114A. Deposition of Susan Rush, (“ <i>Exhibit G</i> ”),
17	Ms. Rush was approximately 5’	79:6 -13.
18	5” and weighed 125 to 128 lbs.	
19	115. While Ms. Rush was	115A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
20	being handcuffed and arrested,	<i>H</i> ”), 49:18 – 50:2.
21	there was no other officer	
22	present at the scene other than	
23	Officer Lopez and Officer	
24	Fujita.	
25	116. Officer Lopez observed	116A. Deposition of Lizette Lopez, (“ <i>Exhibit</i>
26	Officer Fujita move Ms. Rush	<i>H</i> ”), 50:11 – 15.
27	from one direction to another.	

1 2 3 4 5 6	117. According to Officer Lopez' Deposition, Ms. Rush just stood at the location and made statements before Officer Fujita placed her in a rear-double-wing control hold.	117A. Deposition of Lizette Lopez, (<i>"Exhibit H"</i>), 63:14 – 20.
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	118. Officer Lopez recorded Officer Fujita placing handcuffs on Ms. Rush. Although Officer Lopez does not admit to this action, it can only be Officer Lopez who is behind the iphone recording. At this point of the incident, no other officers were present at the scene except Officer Lopez and Officer Fujita. Since Officer Fujita and Ms. Rush are captured in the recording, one can deduce that Officer Lopez is the person behind the iphone recording the incident.	118A. Video recording of Officer Fujita handcuffing Ms. Rush, recorded from Ms. Rush's iphone, (<i>"Exhibit J"</i>). Deposition of Lizette Lopez, (<i>"Exhibit H"</i>), 49:18 – 50:2, stating no other officers were present at the location during Ms. Rush's arrest.
23 24 25 26	119. After her arrest on Broadway, Defendant Lopez transported Ms. Rush to the Santa Monica Jail.	119A. Deposition of Lizette Lopez, (<i>"Exhibit H"</i>), Supplemental Report of Defendant Lopez, Exhibit 2 to the Deposition of Defendant Lopez, 54:12-25.

120. Ms. Rush's phone was returned to her several months later, after the criminal case brought against her by Officer Fujita was dismissed.

120A. Declaration of Susan Rush, (*"Exhibit F"*), ¶10.

121. Ms. Rush reviewed the in-car audio video recording of Defendant Fujita and saw herself crossing the police vehicle parked in the middle of the street, which is time stamped at 18:17:07.

121A. Declaration of Susan Rush, (*"Exhibit F"*), ¶11.

122. Ms. Rush heard the in-car audio video recording of Defendant Fujita where she is screaming at the time stamp of 18:18:14

122A. Declaration of Susan Rush, (*"Exhibit F"*), ¶12. In-car video and audio recording of Defendant Fujita, (*"Exhibit K"*).

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By /s/
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